

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

MICHELLE DAUGHERTY,)	
)	
Plaintiff)	
)	
vs.)	Civil Action No. <u>9:13-cv-692-CWH-BHH</u>
)	
JOHN MENZER; and)	
LIVE OAK RESTAURANT CONCEPTS,)	
LLC; and KICKIN' CHICKEN)	
INTERNATIONAL, LLC;)	
)	
Defendants.)	
)	

**NOTICE OF REMOVAL OF DEFENDANTS MENZER AND LIVE OAK
RESTAURANT CONCEPTS**

COME NOW Defendants John Menzer and Live Oak Restaurant Concepts, LLC (LORC), by and through their counsel, Constangy, Brooks & Smith, LLP, and file this Notice of Removal pursuant to 28 U.S.C. Section 1446. Defendant Kickin' Chicken International, LLC, expressly consents to removal of this action as set forth below. Defendants Menzer and LORC respectfully show:

1. Plaintiff filed her Summons and Complaint, Civil Action Number 2013-CP-07-00383, in the Court of Common Pleas for the Fourteenth Judicial Circuit, State of South Carolina, in the County of Beaufort, on February 15, 2013. Defendants Menzer and Live Oak Restaurant Concepts, LLC, were served with the Summons and Complaint by process server on February 15, 2013. Defendant Kickin' Chicken International, LLC, was served with the Summons and Complaint by certified mail on February 19, 2013. As required by 28 U.S.C.

Section 1446(a), true and correct copies of all process, pleadings, and orders served upon Defendants Menzer and LORC are attached hereto and are incorporated herein by reference. (See Attachment A.)

2. Pursuant to 28 U.S.C. Section 1446(b), this Notice of Removal is filed within 30 days after all Defendants received the Summons and Complaint.

3. From the face of the Complaint, it appears that Plaintiff alleges:

- a. she was an employee of Defendant Live Oak Restaurant Concepts, LLC;
- b. Defendants subjected her to a hostile work environment and discriminated her against on the basis of her sex; and
- c. the actions of Defendants are a violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e, *et seq.*; among other claims.

4. Plaintiff seeks unspecified actual damages, punitive damages, attorneys' fees, costs, and other appropriate relief.

FEDERAL QUESTION JURISDICTION

5. In her Complaint, Plaintiff specifically refers to and alleges a cause of action under Title VII of the Civil Rights Act of 1964, which is a federal statute applying to the employer-employee relationship. (Compl. ¶¶ 13, 55-64.)

6. The additional causes of action stated by Plaintiff for wrongful termination, assault, and intentional infliction of emotional distress arise from the same case or controversy as Plaintiff's federal claim. Defendants Menzer and LORC therefore request that this Court exercise jurisdiction over the additional causes of action as pendent state claims, pursuant to 28 U.S.C. Sections 1367 and 1441(c). *Talamantes v. Berkeley County Sch. Dist.*, 340 F.Supp.2d 684, 690 (D.S.C. 2004) (discussing factors in favor of retaining jurisdiction).

7. Therefore, the case set forth above, Civil Action Number 2013-CP-07-00383, in the Court of Common Pleas for the Fourteenth Judicial Circuit, State of South Carolina, in the County of Beaufort, could have originally been brought before this Court pursuant to 28 U.S.C. Section 1331.

8. Defendants Menzer and LORC have complied with the requirements of Rule 83.IV.01 of the Local Civil Rules of the United States District Court for the District of South Carolina.

9. Defendants Menzer and LORC have complied with Local Civil Rule 26.01 by filing their Answers to Local Civil Rule 26.01 Interrogatories simultaneously with this Notice of Removal.

WHEREFORE, Defendants Menzer and LORC pray that the above-captioned action now pending in the Court of Common Pleas for the Fourteenth Judicial Circuit, State of South Carolina, in the County of Beaufort, be removed to this Court.

Dated this the 15th day of March 2013.

Respectfully submitted,

CONSTANGY, BROOKS & SMITH, LLP

s/M. Brian Magargle

M. Brian Magargle

Federal Court ID No. 6166

*Attorneys for Defendants John Menzer and
Live Oak Restaurant Concepts, LLC*

1301 Gervais Street, Suite 810 (29201)
Post Office Box 11297
Columbia, SC 29211-1297
803.256.3200 ph
803.256.6277 fx
bmagargle@constangy.com

CERTIFICATE OF SERVICE

I, M. Brian Magargle, do hereby certify that the foregoing **NOTICE OF REMOVAL OF DEFENDANTS MENZER AND LIVE OAK RESTAURANT CONCEPTS** has been served upon the following persons through the Electronic Case Filing (ECF) system and by United States mail, properly addressed, and with the correct amount of postage affixed thereto:

Patrick W. Carr, Esq.
Berry & Carr
2 Spanish Wells Road
Hilton Head Island, SC 29926

William Jordan, Esq.
Sowell Gray Stepp & Laffitte, LLC
Post Office Box 11449
Columbia, SC 29211

Dated this the 15th day of March 2013.

s/M. Brian Magargle
M. Brian Magargle
Federal Court ID No. 6166

*Attorneys for Defendants John Menzer and
Live Oak Restaurant Concepts, LLC*

1301 Gervais Street, Suite 810 (29201)
Post Office Box 11297
Columbia, SC 29211-1297
803.256.3200 ph
803.256.6277 fx
bmagargle@constangy.com